insurance company is not charged with notice of a recorded mortgage so as to waive a forfeiture clause for breach of condition against encumbrancing.[4] But if the records operate as notice to all the world, the insurance companies would be charged with knowledge of the breach, where they accepted the premiums, and could not escape liability.

This question was neatly raised in a recent case where a commission merchant, ignorant of an existing mortgage on cattle, sold them and remitted the proceeds to the consignor. *Greer* v. *Newland*, 77 Pac. Rep. 98 (Kans.). The mortgagee recovered, in an action against the commission merchant, on a count for money had and received. The court argued that the record gave constructive notice, which is the equivalent of actual notice, and that, therefore, the defendant was in the same position as one who, knowing of a theft, sold stolen goods and gave the proceeds to the thief. Whether the defendant was liable in trover is immaterial to this discussion. But clearly the plaintiff should not be allowed to recover in quasi-contract. This claim can be sustained only on strict equitable principles.[5] It is, surely, not equitable to construct, or, at the least, enlarge a liability on a fiction. The court properly deemed knowledge of the wrongfulness, in turning over the proceeds to the consignor, essential to a recovery. But such knowledge should not be imputed from the fact that the mortgage is recorded. The recording acts were never intended to apply to such a case. Such an unfortunate decision as this results from employing the fiction of constructive notice, instead of recognizing that recording really dispenses with the necessity of notice. This distinction was recognized, with the consequence that a contrary decision was reached, in at least one other case involving the very point here at issue.[6]

THE ATTITUDE OF BANKRUPTCY COURTS TOWARD PREFERENCES. — Although there has been some tendency to regard bankruptcy systems as established chiefly for the benefit of unfortunate debtors, yet in the opinion of the ablest authorities, their fundamental purpose is not so much to reinstate the insolvent debtor as to secure the equitable distribution of the bankrupt estate among the creditors.[1] It is to further this end that bankruptcy statutes have provisions penalizing creditors who take and hold preferences. Section 57 *g* of the National Bankruptcy Act of 1898 stipulates that "the claims of creditors who have received preferences shall not be allowed" unless such preferences are surrendered; and section 60 *b* provides that if the person receiving the preference or to be benefited thereby has reasonable cause to believe that a preference was intended, it shall be voidable by the trustee in bankruptcy.

In interpreting these enactments, the courts have stamped preferences with their disapproval. A creditor who has received a preference on any part of any claim is prohibited not only from proving the balance of that particular claim but also from proving any claim whatsoever unless he surrenders his preference.[2] Moreover, by the weight of authority, not only

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4 Wicke *v.* Iowa State Insurance Co., 90 Iowa 4.
5 See Keener, Quasi-Contracts 185.
6 Frizzell *v.* Rundle, 12 S. W. Rep. 918 (Tenn.).

1 See 15 HARV. L. REV. 829, 834, 843.
2 *In re* Conhaim, 97 Fed. Rep. 923.

under the former National Bankruptcy Act of 1867, but more particularly under the present act, a creditor, in order to be permitted to make proof of his claim, must surrender his preference before the trustee has secured judgment against him for its amount.[3] And if the creditor, in litigating the validity of his preference, consumes the year subsequent to the adjudication in bankruptcy, within which according to section 57 *n* all claims must be proved against the estate, a later surrender will avail him nothing.[4]

In view of these facts it is somewhat surprising to find the Supreme Court of Missouri arguing that in order to avoid a preference, the trustee must make his demand a sufficient length of time before the expiration of the year prescribed in section 57 *n* "to afford the preferred creditor a reasonable time in which to surrender the preference and exhibit his claim against the estate." *Swartz* v. *Frank*, 82 S. W. Rep. 60. The court takes the ground that since the preference is not void, but voidable only, the creditor is justified in retaining it until demand by the trustee, upon whom rests the burden of taking the initiative. In support of this position it is to be remembered that the trustee cannot bring an action for the property given in preference until after demand and refusal.[5] On the other hand, there is no provision in the act which places a time limit of less than a year upon the right of the trustee to attack a preference; and with the possible exception of a case where great injustice would otherwise be effected, there can certainly be no argument in favor of interpolating stipulations by judicial decision. Preferences tend to subvert the chief object of a bankruptcy system by hindering the equitable distribution of the insolvent's assets. The Missouri doctrine would encourage them. The creditor would not only enjoy his present privilege of proving his claim after surrender of his preference upon demand; but if he could conceal his fraudulent advantage for one year, or perhaps even less, he would be absolutely safe from attack. A result so clearly opposed to the spirit of bankruptcy legislation should obviously be discountenanced by the courts.

THE RIGHT OF A PERSON TO TRADE IN HIS OWN NAME. — The enormous sale of articles obtained in recent years by extensive advertising of a trade name makes the question of one's right to the use of his own name in business of increasing importance. The writer of a recent article maintains that the law on the subject has undergone a change. *The Right of Trading in Your Own Name*, 23 Law Notes (Eng.) 205. The rule is frequently stated to be that apart from the use of an artifice in connection with a name, "everyone has the absolute right to use his own name honestly in his own business."[1] But the writer of the article referred to lays it down that the English Courts will now go further, and will restrain a person, though he be acting *bona fide*, from "using *any* name, or indeed, *any word*, in such a way as to trade on some one else's reputation." The cases cited in support of this position seem scarcely to go that far. In one case Jamieson and Co. of Aberdeen had established a reputation for making a

[3] *In re* Greth, 112 Fed. Rep. 978; see Collier on Bankruptcy, 4 ed., p. 391.
[4] *In re* Rhodes, 105 Fed. Rep. 231.
[5] See *In re* Phelps, 3 Am. B. Rep. 396, 400–401.

[1] Russia Cement Co. *v.* Lepage, 147 Mass. 206, 208; Turton *v.* Turton, 42 Ch. D. 128.